IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 7939 OF 2007

Kanhaiyalal Motilal Talera .... Petitioner

versus

Smt. Sarubai Narayan Mulik & ors..... Respondent.

Mr. Y.S.Jahagirdar i/b M.J. Jamdar for the petitioner
Shri S.M.Gorwadkar for respondent nos. 1 and 2.

CORAM; A.P. DESHPANDE, J.
DATED; 25TH OCTOBER, 2007

P.C.;

1. An order passed by the trial court rejecting the application moved by the present petitioner for his examination on commission has given rise to the filing of this petition.

2. The suit has a chequered history. The order passed by this court on 20-9-2007 happened to be the last round to this court. The order reveals that by making an exception to an earlier order passed by this court, the plaintiff was permitted to remain present for deposing before the court on 9-10-2007. The assurance given on behalf of the plaintiff was accepted that the plaintiff would co-operate in disposal of the suit without making any request for

adjournment. However, though the plaintiff attended the court on 9-1 0-2007, and after he was cross examined for sometime he sought adjournment as he was not feeling well. The adjournment was granted and the matter was kept on the next day. On the next day though the plaintiff attended the court, the court was informed that the plaintiff is not in a position to depose and thereafter the application has been moved for recording of the evidence of plaintiff by appointing a commissioner at his residence, and that application has been rejected. I am further informed that the suit is now fixed for argument tomorrow.

3. Having regard to the totality of the facts and circumstances, I do not propose to interfere with the impugned order at this stage. Leaving all questions open to be agitated before the appellate court, the writ petition is summarily dismissed.

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